IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/12/2003

CORAM

THE HONOURABLE MR JUSTICE V. KANAGARAJ

CIVIL REVISION PETITION NO.3081 OF 2001
and
C.M.P.No.16277 of 2001

Chitra Srinivasan ... Petitioner

-Vs-

R. Srinivasan ... Respondent

Petition filed under Article 227 of the Constitution of India praying for the relief as stated therein.

!For Petitioner : Mr. S. Devanathan

^For respondent : No appearance

:O R D E R

This Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the fair and decretal dated 8.8.2001 made in I.A.No.520 of 2000 in O.P.No.742 of 1997 by the Court of II Additional Family Judge, Chennai and to enhance the maintenance amount.

2. Tracing the history of the above civil revision petition having come to be filed, it comes to be known that the respondent herein has filed O.P.No.742 of 1997 before the Court of II Additional Family Judge, Chennai for divorce. Pending the said Original Petition, the petitioner herein has filed a petition in I.A.No.520 of 2000 praying interim maintenance and other reliefs, and since the said petition was allowed granting a sum of Rs.500/= as monthly maintenance, besides the other reliefs, challenging the quantum of interim maintenance, the petitioner herein has come forward to file the civil revision petition on certain grounds as brought forth in the grounds of revision such as that the learned Judge was wrong in determining the quantum of interim maintenance on the sole ground that the respondent is a blind man and that he cannot work without the help of others and this fact itself would enable the Court to decide the issue as to the fixation of quantum of interim maintenance; that the learned Judge ought to have seen that the respondent/husband is a graduate, well built, and is employed in the Insurance Company in a respectable post and is doing the job independently and is drawing a salary of Rs.9,401/=; that the learned Judge was wrong in

observing that the respondent being a blind man, with great difficulty, has been working in the office and earning the income, when the respondent himself has not expressed his difficulties in the counter and the learned Judge ought to have seen that no company/employer would pay salary to any person in a gratuitous manner; that the learned Judge has erred in showing sympathy towards the respondent/husband that he is a blind man in the interim alimony application filed by the petitioner/wife when she is contesting and resisting the petition filed by the husband for dissolution of marriage under Section 13(1)(a) and 13(1)(ib) of the Hindu Marriage Act, 1955; that the learned Judge ought to have shown sympathy towards the petitioner/wife when she pleaded that she did not have any source of income for her livelihood and that she is depending on her aged parents; that the learned Judge was wrong in observing that the petitioner/wife is not entitled to claim interim maintenance from the respondent, who is a blind man, under Section 24 of the Hindu Marriage Act and the petitioner cannot invoke the said provision to the facts arising in this case; that the learned Judge has overlooked the fact that the respondent/husband has only moved the petition for Divorce under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 and that the wife, in spite of the physical inability of her husband, is opposing this petition filed by the husband and in such circumstances, the husband having filed the petition for divorce, ought to have given the interim alimony as prayed for by the wife for her livelihood; that the learned Judge ought to have seen that Section 24 does not say that the interim alimony will not be granted to the wife in a case where the husband is a physically handicapped person; that the Court cannot import limitation on the Section when the Section is clear in respect of granting the quantum of interim maintenance; that the learned Judge was wrong in taking into consideration the net salary of the respondent/husband in determining the quantum of interim maintenance payable to the petitioner/wife; that the learned Judge has erred in taking into account the deductions shown in the salary certificate produced by the respondent while fixing the interim maintenance under Section 24 of the Hindu Marriage Act; that the order of the learned Judge in determining the monthly interim maintenance under Section 24 at Rs.500/= is arbitrary as it is not based on any material and the amount so determined is not a reasonable one and is based on assumption; that the learned Judge was wrong in observing that the petitioner/wife is not entitled to claim maintenance under Section 24 and Section 24 of the Act does not visualize these types of cases and this observation is putting a spokes on the provisions of law when there is no restriction or limitation in the Section, resulting in determination of interim maintenance below the par and hence this revision.

3. During arguments, learned counsel appearing on behalf of the petitioner would only reiterate the points raised in the petition and would cite the following judgments in support of her case.

(i) M.Ravishankar v. R.Pushpa {I (1998) DMC 197}
(ii) Rajesh v. Anuradha {II (1998) DMC 440}
(iii) Sudha @ Ranjana R.Patil v. Rajkumar Deoganda Patil {II (1998) DMC 417}
So far as first judgment cited above is concerned, it is held therein:

"It is seen that the petitioner is getting a salary of Rs.6,600/= and odd, out of which Rs.5,000/= and odd is shown as deductions. Some of the loans such as F.A., L.I.C. Premium, P.F. loan, etc. cannot be taken into account for the purpose of determining the resources of the petitioner. However, taking into consideration the income-tax, P.F. and the house building loan deductions, it would be reasonable to fix an interim maintenance of Rs.1,000/= per month subject to appropriate fixation at the final hearing."

So far as second judgment cited above is concerned, it is held therein:

"The scheme of the provisions of Hindu Marriage Act clearly show the legislative intent to protect the interests of the spouse in the event of matrimonial dispute. A spouse unable to maintain himself/ herself is entitled to maintenance on the principle of equi-status and respect, that the spouse would have enjoyed if continued to live with the other spouse. The provisions for maintenance pendente lite and even for future maintenance at the time of dissolution of marriage are indicative of a profound concern of the law makers for the said spouse and respect for the institution of marriage. Nothing has been brought on record which could reflect that there could be any plausible reason or justification for declining maintenance claimed by the wife may be the extent of the claim is a matter to be considered."

So far as third judgment cited above is concerned, it is held therein:

"Blindness of husband: No ground to refuse maintenance - Section 12 5, Criminal Procedure Code speaks of inability of wife to maintain herself - It does not speak about physical capacity or earning capacity of husband to maintain himself or wife or children - Husband, even though blind, his entering into marriage with wife, petitioner indicates his undertaking to maintain his wife - Immovable property standing in name of husband transferred by him to avoid legal clutches - Order passed by Judicial Magistrate modified - Maintenance amount enhanced to Rs.300/= from Rs.150/= per month."

On such arguments, the learned counsel would seek to allow this petition granting more maintenance.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, it could be assessed that the main application in O.P.No.742 of 1997 has been filed by the respondent/husband, who is alleged to be totally blind, under Section 13(1)(ia) and (ib) of the Hindu Marriage Act for dissolution of the marriage solemnized between himself and the petitioner/wife on 01.12.2003, in which, the petitioner/ wife has filed I.A.No.520 of 2000 seeking monthly interim maintenance of Rs.2,750/= towards interim alimony, Rs.250/- towards travelling expenses and Rs.750/= towards litigation expenses respectively, and the trial court, having gone into the facts of the interlocutory application filed by the petitioner/wife and assessing all the conditions prevalent in the case such as the wife is jobless, the husband is blind and drawing a salary of Rs.3,868/= as per the salary certificate, even

though it is claimed on the part of the petitioner/wife that his gross salary is Rs.9,401/=, and without anybody's support, the husband may not be able to take care of himself and that it involves sufficient expenses, and further the respondent/husband being a blind person, it is not reasonable to burden him with heavy amount of maintenance as claimed by the petitioner/wife, has ultimately granted a sum of Rs.5 00/= as monthly interim maintenance, Rs.250/= as travelling expenses and Rs.750/= as litigation expenses to the petitioner, which in toto, comes around Rs.1,500/-, and it cannot be said to be a minor amount in whatever form the same has been granted to t he revealed salary; that the trial court, having its own discussions on the merit of the case and with due opportunity for the parties to be heard, has ultimately arrived at the conclusion as mentioned supra.

5. A careful perusal of the order passed by the lower court would also show that the lower court has traced the facts and circumstances as pleaded by parties and has had its own discussions on the subject in the context of the law prevailing on the subject and has ultimately arrived at the conclusion to pass orders granting a total maintenance of Rs.1,500/= as aforementioned, and this Court is not inclined to cause its interference into the well considered and merited order passed by the lower court.

6. Furthermore, there is also no room for any more discussion to be held on the subject since no other

legality is argued on the part of the petitioner, excepting to cite the above judgments, all of which are general in nature, either brining out the intent of legislature to protect the interest of the spouse or the quantum to be fixed and the like, and therefore, the judgments cited on the part of the petitioner would have only a little impact on the subject, which has to be decided only on the facts pleaded and observing the norms of granting interim maintenance.

In result,
(i) the above civil revision petition does not merit acceptance and it becomes liable only to be dismissed and is dismissed as such;
(ii) the fair and decretal dated 8.8.2001 made in I.A.No.520 of 200 0 in O.P.No.742 of 1997 by the Court of II Additional Family Judge, Chennai, is hereby confirmed;
(iii) consequently, C.M.P. No.16277 of 2001 is also dismissed;
(iv) however, in the circumstances of the case, there shall be no order as to costs.

kb/gs.
Index:Yes.
Internet:Yes.

To

The II Additional Judge, Family Court, Chennai.